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6 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
7 **IN AND FOR THE COUNTY OF LINCOLN**

8 STATE OF WASHINGTON,
9 DEPARTMENT OF ECOLOGY,

10 Plaintiff,

11 v.

12 LINCOLN COUNTY

13 STATE OF WASHINGTON,
14 DEPARTMENT OF
15 TRANSPORTATION

16 LINCOLN MUTUAL #3

17 JOE AND TINA CLARK

18 JEROME CLARK

19 Defendants.

NO.

CONSENT DECREE

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I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology), Lincoln County, the Washington State Department of Transportation, Lincoln Mutual #3, Joe and Tina Clark, and Jerome Clark is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. Lincoln County, the Washington State Department of Transportation, Lincoln Mutual #3, Joe and Tina Clark, and Jerome Clark shall be referred to herein as the "Defendants." Defendants Lincoln Mutual #3, Joe and Tina Clark, Jerome Clark, and the Washington State Department of Transportation, all of whom have been named by Ecology as "potentially liable persons" pursuant to RCW 70.105D, are not signatories to this Decree. This Decree requires the Defendants to undertake the following remedial action(s):

- (1) Excavation of petroleum contaminated soils;
- (2) Backfill with clean soils mixed with an oxygen-releasing compound;
- (3) Installation of an impervious barrier and stormwater control system according to design specifications approved by Ecology;
- (4) Groundwater monitoring through the quarterly sampling of existing wells; and
- (5) Institutional controls in the form of restrictive covenants, fences, signs, and the maintenance of these controls.

Ecology has determined that these actions are necessary to protect public health and the environment.

B. The Complaint in this action is being filed simultaneously with this Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the parties wish to resolve the issues raised by Ecology's Complaint. In addition, the

1 parties agree that settlement of these matters without litigation is reasonable and in the public
2 interest and that entry of this Decree is the most appropriate means of resolving these matters.

3 C. In signing this Decree, Defendants agree to its entry and agree to be bound by
4 its terms.

5 D. By entering into this Decree, the parties do not intend to discharge nonsettling
6 parties from any liability they may have with respect to matters alleged in the complaint. The
7 parties retain the right to seek reimbursement, in whole or in part, from any liable persons for
8 sums expended at the Site, including but not limited to sums expended under this Decree.

9 E. This Decree shall not be construed as proof of liability or responsibility for any
10 releases of hazardous substances or cost for remedial action nor an admission of any facts;
11 provided, however, that the Defendants shall not challenge the jurisdiction of Ecology in any
12 proceeding to enforce this Decree.

13 F. The Court is fully advised of the reasons for entry of this Decree, and good
14 cause having been shown;

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

16 **II. JURISDICTION**

17 A. This Court has jurisdiction over the subject matter and over the parties pursuant
18 to chapter 70.105D RCW, the Model Toxics Control Act (MTCA).

19 B. Authority is conferred upon the Washington State Attorney General by RCW
20 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public
21 notice and hearing, Ecology finds the proposed settlement would lead to a more expeditious
22 cleanup of hazardous substances. RCW 70.105D.040(4)(b) requires that such a settlement be
23 entered as a consent decree issued by a court of competent jurisdiction.

24 C. Ecology has determined that a release or threatened release of hazardous
25 substances has occurred at the Site that is the subject of this Decree.

1 D. Ecology has given notice to Defendants, as set forth in RCW 70.105D.020(16),
2 of Ecology's determination that the Defendants are potentially liable persons for the Site and
3 that there has been a release or threatened release of hazardous substances at the Site.

4 E. The actions to be taken pursuant to this Decree are necessary to protect public
5 health, welfare, and the environment.

6 F. Defendants have agreed to undertake the actions specified in this Decree and
7 consents to the entry of this Decree under the MTCA.

8 III. PARTIES BOUND

9 This Decree shall apply to and be binding upon the signatories to this Decree (Parties),
10 their successors and assigns. The undersigned representative of each party hereby certifies that
11 he or she is fully authorized to enter into this Decree and to execute and legally bind such party
12 to comply with the Decree. Defendants agree to undertake all actions required by the terms
13 and conditions of this Decree and not to contest state jurisdiction regarding this Decree. No
14 change in ownership or corporate status shall alter the responsibility of the Defendants under
15 this Decree. Defendants shall provide a copy of this Decree to all agents, contractors and
16 subcontractors retained to perform work required by this Decree and shall ensure that all work
17 undertaken by such contractors and subcontractors will be in compliance with this Decree.

18 IV. DEFINITIONS

19 Except for as specified herein, all definitions in WAC 173-340-200 apply to the terms in
20 this Decree.

21 A. Site: The Site, referred to as the South Wilbur Petroleum Contamination Site, is
22 located at the area of the intersection of Anne Street and Front Avenue, Wilbur, Washington.
23 The Site is more particularly described in Exhibit A to this Decree that is a detailed site
24 diagram. The Site is a "facility" under RCW 70.105D.020(4).
25

1 B. Parties: Refers to the Washington State Department of Ecology and Lincoln
2 County, Washington State Department of Transportation, Lincoln Mutual #3, Joe and Tina
3 Clark, and Jerome Clark.

4 C. Defendants: Refers to Lincoln County, Washington State Department of
5 Transportation, Lincoln Mutual #3, Joe and Tina Clark, and Jerome Clark.

6 D. Consent Decree or Decree: Refers to this Consent Decree and each of the
7 exhibits to the Decree. All exhibits are integral and enforceable parts of this Consent Decree
8 and are hereby incorporated by reference. The terms "Consent Decree" or "Decree" shall
9 include all Exhibits to the Consent Decree. In the event of a conflict between an Exhibit and
10 the Decree, the Decree shall prevail.

11 V. STATEMENT OF FACTS

12 Ecology makes the following finding of facts without any express or implied
13 admissions by Defendants.

14 1. The South Wilbur Petroleum Contamination Site is located in the area of the
15 intersection of Anne Street and Front Avenue in Wilbur, WA and consists of three properties,
16 the former Washington State Department of Transportation (WSDOT) maintenance facility,
17 the Lincoln County maintenance facility, and the former Lincoln Mutual #3 property.

18 2. The former WSDOT property is located at 103 SE Front Avenue. It was
19 operated as a vehicle fueling and maintenance yard by WSDOT from the 1930s until the early
20 1970s.

21 3. The Lincoln County maintenance facility is located at 108 and 112 SE Anne
22 Street. It has been operated as a vehicle fueling and maintenance yard by Lincoln County from
23 the 1930s through the present.

24 4. The former Lincoln Mutual #3 property is located at 15 SE Anne Street. It was
25 operated as a fueling station by Lincoln Mutual #3 from 1963 through 1991. In January 1993,

1 the property was purchased by Joe and Tina Clark and Jerome Clark (J.C.T Properties) and the
2 building on-site is currently used as office and storage space.

3 5. The WSDOT facility had one 1,000-gallon diesel underground storage tank
4 (UST) and one 1,000-gallon gasoline UST. Diesel-contaminated soil was discovered during
5 the removal of the USTs in 1991.

6 6. The Lincoln County facility had four USTs of various volumes containing
7 diesel, gasoline, and waste oil. By 1995 they had all been removed.

8 7. The Lincoln Mutual #3 facility had an unknown number of USTs which
9 contained gasoline and diesel. They were all removed prior to 1991.

10 8. Site investigations by WSDOT in 1997 and 1998 found petroleum
11 contamination in soil and groundwater on and upgradient of the WSDOT and Lincoln County
12 properties.

13 9. Ecology's contractor, SAIC, performed additional site characterization in 1998.
14 Soil contamination below five feet and groundwater contamination was documented on all
15 three properties. Although no contamination was detected in adjacent Goose Creek, the
16 shallow groundwater system feeds the surface water.

17 10. Diesel, gasoline, benzene, toluene, ethyl benzene, and xylene are the
18 contaminants of concern in soil and groundwater.

19 11. Petroleum and petroleum products are hazardous substances as defined in RCW
20 70.105D.020(7)(d).

21 12. The site was evaluated through the Washington Ranking Method (WARM) in
22 August of 1999 and received a ranking of 1.

23 13. In certified correspondence dated August 9, 1999, Ecology notified the PLPs of
24 the preliminary finding of potential liability and requested comment on that finding.
25

14. In certified correspondence dated October 6, 1999, Ecology notified the PLPs of their status as potentially liable persons with regard to the release of hazardous substances at the South Wilbur Petroleum Site.

15. On August 7, 2000, Ecology and Lincoln County entered into Agreed Order No. 00TCPER-1465, under which Lincoln County conducted a remedial investigation to determine the extent of contamination at the Site and prepared a feasibility study of remedial alternatives for the Site.

16. Under the Agreed Order, Lincoln County submitted the Final Report – Lincoln County RI/FS Report South Wilbur Petroleum Contamination Site (May 2002) (RI/FS). The RI/FS presents the results of soil and groundwater sampling. Ecology approved the RI/FS on June 20, 2002.

17. A Cleanup Action Plan was prepared for the Site by Ecology that determined the contaminants of concern, selected the cleanup alternative, and outlined the remedial actions to be taken.

VI. WORK TO BE PERFORMED

This Decree contains a program designed to protect public health, welfare and the environment from the known release, or threatened release, of hazardous substances or contaminants at, on, or from the Site through implementation of the Cleanup Action Plan (Exhibit B).

1. Defendants shall implement the Cleanup Action Plan (Exhibit B).

2. Defendants shall perform all tasks and submit to Ecology all deliverables set forth in the Scope of Work and Schedule (Exhibit C). The Scope of Work and Schedule (Exhibit C) will serve as a detailed description of the work elements outlined in the Cleanup Action Plan.

1 3. The Engineering Design Report, Construction Plans and Specifications, and
2 Operations and Maintenance Plan are subject to review and approval by Ecology before the
3 Defendants perform work under those plans. The Defendants shall incorporate Ecology's
4 comments on the drafts into the final versions of these documents. Upon approval, these
5 documents shall become integral and enforceable parts of this Decree, and shall be complied
6 with by the Defendants.

7 4. Within sixty (60) days of entry of this Decree, Defendants shall record with the
8 Lincoln County Auditor's Office the Restrictive Covenant attached to this Decree as Exhibit D
9 and provide Ecology with proof of such recording.

10 5. Defendants agree not to perform any remedial actions outside the scope of this
11 Decree unless the parties agree to amend the scope of work to cover these actions. All work
12 conducted under this decree shall be done in accordance with Ch. 173-340 WAC unless
13 otherwise provided herein.

14 **VII. DESIGNATED PROJECT COORDINATORS**

15 The project coordinator for Ecology is:

16 Sandra Treccani
17 Department of Ecology
18 Eastern Regional Office
19 4601 N. Monroe, Suite 202
20 Spokane, WA 99205-1295

21 The project coordinator for the Defendants is:

22
23 Bob Breshears
24 Lincoln County Public Works
25 27234 SR 25 N

Davenport, WA 99122

Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative at the Site. To the maximum extent possible, communications between Ecology and the Defendants and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree, shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the remedial work required by this Decree. The project coordinators may agree to minor modifications to the work to be performed without formal amendments to this Decree. Minor modifications will be documented in writing by Ecology.

Any party may change its respective project coordinator. Written notification shall be given to the other parties at least ten (10) calendar days prior to the change.

VIII. PERFORMANCE

All work performed pursuant to this Decree shall be under the direction and supervision, as necessary, of a professional engineer or hydrogeologist, or equivalent, with experience and expertise in hazardous waste site investigation and cleanup. Any construction work must be under the supervision of a professional engineer. Defendants shall notify Ecology in writing as to the identity of such engineer(s) or hydrogeologist(s), or others and of any contractors and subcontractors to be used in carrying out the terms of this Decree, in advance of their involvement at the Site.

IX. ACCESS

Ecology or any Ecology authorized representatives shall have the authority to enter and freely move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant

1 to this Decree; reviewing Defendants' progress in carrying out the terms of this Decree;
2 conducting such tests or collecting such samples as Ecology may deem necessary; using a
3 camera, sound recording, or other documentary type equipment to record work done pursuant
4 to this Decree; and verifying the data submitted to Ecology by the Defendants. All parties with
5 access to the Site pursuant to this paragraph shall comply with approved health and safety
6 plans.

7 **X. SAMPLING, DATA REPORTING, AND AVAILABILITY**

8 With respect to the implementation of this Decree, Defendants shall make the results of
9 all sampling, laboratory reports, and/or test results generated by it, or on its behalf available to
10 Ecology and shall submit these results in accordance with Section XI of this Decree.

11 In accordance with WAC 173-340-840(5), sampling data shall be submitted by the
12 Defendants in an electronic format agreeable to Ecology's site coordinator. These submittals
13 shall be provided to Ecology in accordance with Section XI of this Decree.

14 If requested by Ecology, Defendants shall allow split or duplicate samples to be taken
15 by Ecology and/or its authorized representatives of any samples collected by Defendants
16 pursuant to the implementation of this Decree. Defendants shall notify Ecology seven (7) days
17 in advance of any sample collection or work activity at the Site. Ecology shall, upon request,
18 allow split or duplicate samples to be taken by Defendants or its authorized representative of
19 any samples collected by Ecology pursuant to the implementation of this Decree provided it
20 does not interfere with the Department's sampling. Without limitation on Ecology's rights
21 under Section IX, Ecology shall endeavor to notify Defendants prior to any sample collection
22 activity.